

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
Roanoke Division

GEORGE FREDERICK DELANEY,

Plaintiff

v.

Civil Action No.: 7:08-cv-00465

ROBERT MARSH, ET AL.,

Defendants.

DEFENDANT JOHN O. MARSH, M.D.'S MOTION
FOR PROTECTIVE ORDER

Defendant John O. Marsh, M.D., by counsel, moves this Court for an order protecting it from discovery and states as follows:

1. Plaintiff is a *pro se* prisoner who has filed a 42 U.S.C. § 1983 action against Dr. Marsh for deliberate indifference to a serious medical condition.
2. Defendant filed an Answer asserting among defenses qualified immunity. Defendant intends to file a motion for summary judgment and memorandum in support on the basis of qualified immunity.
3. Plaintiff served counsel on March 28, 2010 with Request for Production of Documents.

4. Discovery should not be allowed to proceed in this case until the question of qualified immunity is resolved. Mitchell v. Forsythe, 472 U.S. 511, 526 (1986); Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The qualified immunity doctrine “ ‘permits the resolution of many insubstantial claims on summary judgment’ and to avoid ‘subjecting governmental officials either to the cost of trial or to the burdensome of broad reaching discovery’ in cases where the legal norms the officials are alleged to have violated were not clearly established at the time.” Mitchell, 472 U.S. 526, citing, Harlow, 457 U.S. at 817 - 818. “Unless the plaintiff’s allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery.” See id., at 818; See also, Cloaniger v. McDevitt, 555 F. 3d 324 (4th Cir. 2009).

5. Discovery at this early stage before the issue of qualified immunity has been resolved should not be permitted.

FOR THESE REASONS, defendant respectfully requests that this Court grant his motion and enter an order protecting him from answering the discovery propounded and prohibiting further discovery until such time as this Court determines the issue of qualified immunity.

JOHN O. MARSH, M.D.

By Counsel

Timberlake, Smith, Thomas & Moses, P. C.
25 North Central Avenue
P. O. Box 108
Staunton, VA 24402-0108
phone: 540/885-1517
fax: 540/885-4537

By: s/s James D. Mayson
James D. Mayson
VSB # 47152

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed, postage prepaid to plaintiff on April 22, 2010, and I have electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

George Delaney #374390
Powhatan Correctional Center
3600 Woods Way
State Farm. VA 23160

Erin Williams Hapgood
415 S. College Avenue
Salem, VA 24153

Richard Carson Vorhis
Office of the Attorney General
900 Est Main Street
Richmond, VA 23219

s/s James D. Mayson

James D. Mayson

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